Appl. No. 10/695,283
Docket No. 9086M
Amdt. dated July 1, 2010
Reply to Office Action mailed on April 9, 2010
Customer No. 27752

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REMARKS/ARGUMENTS

Claims 1 and 6-9 remain under consideration. Claim 1 has been amended to remove the cationic charge recitation (see §112 rejections, below) and to recite the weight ratios of non-cationic : cationic monomers. Basis is at page 9, lines 1-2. Claim 1 now also recites the term "top note" to further clarify the materials that lie within the recited range of Kovat's Index. Basis is as discussed below. It is submitted that all amendments are fully supported and entry is requested.

Rejections Under 35 USC 112

It is submitted that the rejections under §112 are moot, in view of the amendment of Claim 1. Withdrawal of the rejections on this basis is requested.

"Top Note"/Kovat's Index

In making the rejections addressed hereinafter, the Examiner has, ". . . noted that the features upon which applicant relies (i.e., fragrance top notes) are not recited in the rejected claim(s)." Office Action, page 11.

The Examiner's attention is directed to the fact that Claim 1, as previously presented, recited perfume accords having a Kovat's Index of from about 1,000 to about 1,400.

At page 19, perfume materials with a "low" Kovat Index are defined as top notes: "(i.e., top notes)."

At page 20, line 20, a "low" Kovat's Index is that, ". . . which is from about 1,000 to about 1,400 . . ."

Net: A perfume material having Kovat's Index in the range recited in Claim 1 is, in fact, a "top note." Accordingly this key element previously argued in support of patentability is, in fact, recited in the claims. Moreover, this support for patentability is not refuted by the cited documents.

In any event, Claim 1 herein has also been amended to recite the "top note" language, solely to speed prosecution.

Rejections Under 35 USC 103

Claim 1 stands rejected under §103(a) over US 2003/0017125 in view of US 6,040,282, for reasons of record at pages 3-6 of the Office Action.

Claims 1 and 6-9 also stand rejected over US 2002/0058015 in view of '7125 and further in view of '282, for reasons of record at pages 6-10 of the Office Action.

Applicants again respectfully traverse all rejections under §103.

All previous arguments and case law in support of patentability continue to apply, but will not be exhaustively repeated herein cited for the sake of brevity.

With regard to the rejection of Claim 1, the Examiner has taken the position that, "The benefit agent taught by Rollat *et al.*, is identical to that of the instant application . . ." citing Rollat ('7125) at [0053] for the benefit agent.

To the contrary, it is submitted that the bare-bones mention of "perfumes" at [0053] is entirely non-instructive with regard to perfume "top note" materials (and, as explained hereinabove, the present claims do, in fact, focus on such top notes.)

As discussed at pages 1 and 2 of the specification, the Applicants herein are addressing a real-world problem associated with the manufacture and use of everyday consumer products such as laundry detergents, fabric softeners, personal care products and the like. Such products contain perfume ingredients whose formulations would desirably contain volatile top notes. However, to the frustration of formulators, such top notes can be lost by dissolution and/or evaporation. Due to their volatility, it is also difficult to deposit such top note materials onto fabrics or other substrates (page 2, third paragraph). Such considerations, of course, mitigate against using top note perfume ingredients in such products, regardless of their desirable olfactory attributes.

It is this top note problem that is addressed by the present invention. Importantly, from the standpoint of 35 USC 103, none of the cited documents even mentions, much less addresses, this top note problem. As discussed by the Court in *In re Bisley*:

> The discovery of a problem calling for an improvement is often a very essential element in an invention correcting such a problem; and though the

> problem, once realized, may be solved by use of old and known elements, this does not necessarily negative invention. 197 F.2d 355, 94 USPQ 80, 86-87 (C.C.P.A. 1952).

With the foregoing considerations in mind, and with regard to the §103 rejections, under MPEP 2142 the Examiner bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed inventions as a whole would have been obvious. See *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). See also MPEP 2141.02, regarding recognition of the problem as being part of the "invention as a whole" test under §103.

Moreover, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). If the Examiner does not prove a *prima facie* case of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See *In re Oetiker*, 977 F.2d 1443. Applicants respectfully assert that the Office Action fails to meet all of these criteria, and thus fails to make a *prima facie* case of obviousness under 35 USC §103.

As discussed above, the disclosure of "perfume" as the benefit agent in '7125 is in no way "identical" to the top note materials of Claim 1 herein. Accordingly, the Examiner's assertion that the Kovat's Index of '7125 is inherently within the ranges set forth in Claim 1 is unsupported. As the Examiner is aware, the law also requires that:

> Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999).

Moreover, since none of the "perfumes" of the cited document(s) is taught to contain ingredients having the requisite Kovats Index, it cannot be fairly stated that the various particulates disclosed therein would inherently have an affinity for such ingredients.

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It is further submitted that the cited passages of '282 add nothing to '7125 with regard to perfumery top note materials. Hence, the combination of '7125/'282 does not teach this key aspect of the present invention and cannot support a *prima facie* rejection of Claim 1. Reconsideration and withdrawal of the rejection on this basis are requested.

With regard to the second grounds for rejection, the '8015 document's bare-bones disclosure of "fragrances" at [0020] is, like '7125, entirely non-instructive with regard to the key top note element of the present invention. And, as discussed above, '282 is likewise silent on this same key element. Therefore, it must necessarily follow, as a matter of both fact and law, that the combination of '8015/'7145/'282 does not support a *prima facie* conclusion of obviousness under §103. Withdrawal of the rejections on this basis is also requested.

In light of the foregoing, early and favorable action in the case is requested.

Respectfully submitted,
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